

The Honorable Marsha J. Pechman

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**NORTHWEST ENVIRONMENTAL
ADVOCATES**, an Oregon non-profit
corporation,

Plaintiff,

v.

**UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY**,

Defendant.

NO. 20-cv-01362-MJP

**UNOPPOSED MOTION TO
ENTER JUDGMENT**

NOTING DATE: January 18, 2022

Pursuant to Rule 58(d) of the Federal Rules of Civil Procedure, Plaintiff Northwest Environmental Advocates (“NWEA”) hereby moves for entry of judgment in this case. NWEA’s counsel conferred with counsel for Defendant U.S. Environmental Protection Agency (“EPA”), and EPA does not oppose this motion.

On December 29, 2021, the Court granted in part NWEA’s motion for summary judgment and denied EPA’s motion for summary judgment under Federal Rule of Civil Procedure 56. *See generally*, Order on Cross-motions for Summary Judgment, ECF No. 57. The Order resolved the single claim in the case, vacated EPA’s denial

1 of NWEA's Petition, and remanded the Petition to EPA to make a necessity determination
 2 within 180 days of the Court's order unless EPA obtains leave from the Court for additional
 3 time consistent with the Order. *Id.* at 22. The Court did not enter final judgment in a separate
 4 document under Rule 58(a).

5 Ruel 58(d) provides that "[a] party may request that judgment be set out in a separate
 6 document as required by Rule 58(a)." Rule 58(a), in turn, provides that "[e]very judgment and
 7 amended judgment must be set out in a separate document" except if the judgment relates to an
 8 order that falls within one of the categories of motions enumerated in Rule 58(a). A motion for
 9 summary judgment is not one of the enumerated categories. Fed. R. Civ. P. 58(a). Therefore,
 10 judgment in this case must be set out in a separate document.
 11

12 Further, NWEA intends to file a motion for attorneys fees and costs in this case pursuant
 13 to the Equal Access to Justice Act ("EAJA"). Under EAJA, such a motion is to be filed "within
 14 thirty days of final judgment in the action[.]" 28 U.S.C. § 2412(d)(1)(B). A "final judgment"
 15 under EAJA is "a judgment that is final and not appealable[.]" *Id.* § 2412(d)(2)(G). An appeal
 16 as of right may be taken within sixty days after entry of a judgment if one of the parties is a
 17 United States agency, Fed. R. App. P. 4(a)(1)(B)(ii), such as the case here. Thus, a judgment
 18 becomes final for purposes of EAJA once 60 days have elapsed from the date of final judgment
 19 without the filing of a notice of appeal. In this case, the Court's entry of its dispositive summary
 20 judgment order on December 29, 2021, unaccompanied by a separate judgment under Rule
 21 58(d), has created uncertainty regarding these deadlines. The Court's issuance of a separate
 22 judgment would resolve this uncertainty.
 23
 24
 25
 26

1 Plaintiff respectfully requests that the Court grant this unopposed motion and enter a
2 judgment in this case in a separate document. A proposed form of order is being submitted
3 pursuant to Local Rule 10(e)(7), as well as a proposed judgment.
4

5 DATED this 18th day of January, 2022.

6 Respectfully submitted,

7 EARTHRISE LAW CENTER

8
9 By: s/ Lia Comerford
10 Lia Comerford, WSBA No. 56447
11 Lewis & Clark Law School
12 10101 S. Terwilliger Blvd.
13 Portland, OR 97219
14 Telephone: (503) 768-6823
15 Fax: (503) 768-6642
16 E-mail:comerfordl@lclark.edu

17 BRICKLIN & NEWMAN, LLP

18 By: s/ Bryan Telegin
19 Bryan Telegin, WSBA No. 46686
20 1424 Fourth Avenue, Suite 500
21 Seattle, WA 98101
22 Telephone: (206) 264-8600
23 Fax: (206) 264-9300
24 E-mail: telegin@bnd-law.com

25 *Counsel for Plaintiff Northwest Environmental*
26 *Advocates*